

BRIEFING NOTE: COMMUNITY COUNCILS AND THE PLANNING SYSTEM

“The primary responsibility for the operation of the planning system lies with strategic development planning authorities, and local and national park authorities. However, all those involved with the system have a responsibility to engage and work together constructively and proportionately to achieve quality places for Scotland. This includes the Scottish Government and its agencies, public bodies, statutory consultees, elected members, communities, the general public, developers, applicants, agents, interest groups and representative organisations.”
Scottish Planning Policy 2014

Introduction

The aim of this guidance note is to provide basic information to Community Councils on planning matters, and to signpost further information.

The Scottish Government is responsible for developing planning policy in Scotland but the implementation of that policy is primarily a local function. The responsibility for planning matters in the Scottish Borders, including the processing and determination of planning and related applications, rests with Scottish Borders Council

Within SBC, planning is dealt with by the Planning and Related Services Department.

Planning law can be complex and the Government has issued Planning Advice Notes (PANs) and circular guidance to supplement the legal framework. These must be taken into consideration by Local Authorities when developing systems, local policies and taking decisions.



Community Councils have a formal, statutory role in the planning system and must be consulted on a variety of issues. Advice on Community Councils and Planning is given in [PAN 47](#). It is national planning policy to encourage community involvement in the planning system and there is current advice on [Community Engagement](#). In addition, Community Councillors should familiarise themselves with the [SBC E-planning system](#), which is now the primary means of accessing information on planning applications.

Community Councils play a key part in both Development Planning and Development Management. SBC welcomes their role in expressing local opinion whether on wider policy matters or on individual planning applications. The views of Community Councils, where properly expressed and relevant to planning, are important material considerations in the determination of any application.

Development Planning

Development Plans provide a vision of how places should develop, including those areas which should receive special protection.

SBC is one of 6 planning authorities in South East Scotland (Scottish Borders, East Lothian, Midlothian, Edinburgh, West Lothian and Fife) which has been involved in the production of a co-ordinated Strategic Development Plan for the wider region ([SESPlan](#)).

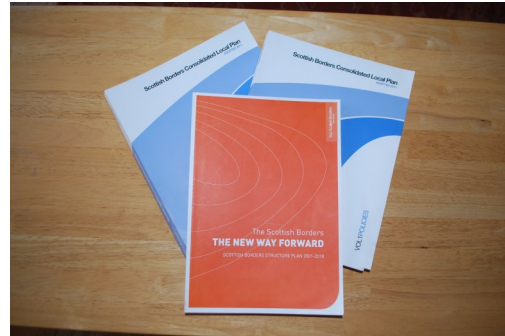
The Local Development Plan adds detail to national and regional policy and is the core document against which planning applications are assessed. The Local Development Plan goes through an extensive consultation process in its development before being adopted by the full Council and it must also be approved by the Scottish Government. The current plan runs to 2025.

Community Councils are statutory consultees and are asked to put forward views and local knowledge at the consultative stages.

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Details of the Development planning process can be found at [Planning policy](#).

Community Councillors should make themselves familiar with the process and should also ensure that they are aware particularly of those areas of the Local Development Plan which affect their communities.



In addition to the main Development Plans, from time to time, SBC issues topic-based (eg replacement windows) supplementary guidance, similar to the PAN system, in the form of Supplementary Planning Guidance (SPGs). Community Councils are consulted during the drafting process of these notes. As with PANs, SPGs are taken into account when planning applications are determined.



Planning Briefs. Detailed [Planning Briefs](#) are usually developed for large-scale development sites or for sites where development will have a major impact. Community Councils in areas affected are consulted at the drafting stage.

Development Management

Development Management is the term used to describe the process by which decisions are made on planning applications. In SBC the development management process is handled by the Planning and Relates Services Division of the Regulatory Services Department. Much of the process is handled electronically and the public can comment on live applications and track their progress from the council's website.

What constitutes development is defined in law and includes building and engineering operations and changes to the use of land and/or buildings. This can include building walls and fences, erecting new buildings, alterations and conversions, attachments to buildings (eg satellite dishes), new roads or accesses, conversions, and demolition. Some minor proposals are classed as permitted development and therefore do not need planning permission.

The full Council determines planning applications which are of national importance or major applications which are a significant departure from the Local Development Plan. Decisions on all other planning applications are taken either by Councillors who are members of the [Planning and Building Standards \(PBS\) Committee](#) or, for the majority of applications, by planning officers in accordance with the [Scheme of Delegation](#) approved by the Council.

The PBS Committee is made up of nine Councillors, including a Chairman and a Vice-Chairman. The Committee normally meets monthly. Councillors of this Committee are required to make decisions on a quasi-judicial basis and on planning grounds, rather than in their capacity as ward Councillors.

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General Information on planning applications

Types of Application

There is a range of different types of application, including planning applications, listed building applications, applications for conservation area consent (where a proposal involves demolition of buildings in a conservation area) and applications for consent to display advertisements. Some development proposals may require a range of permissions.

An application may be submitted for:

- *Planning Permission*. The application must provide the full range of necessary information and seeks consent to carry out works (this is also used for a change of use application). The permission may be subject to 'conditions', setting out requirements, some of which may need to be resolved before work can start.
- *Planning Permission in Principle (PPP)*. This is an application process which can be used by a developer to establish whether the *principle* of their development is acceptable without having to provide detailed information at an early stage. Before an applicant can start work they must subsequently apply for Planning Permission or for -
- *Approval of Matters Specified in Conditions (AMC)*. This only ever follows the grant of PPP and seeks approval for the detailed matters not covered in the PPP but which have "reserved" for future consideration and approval, including as a result of any planning conditions.

Neighbour Notification and Publicity

It is the responsibility of SBC to notify neighbours within 20m of an application site. If there are no premises on a neighbouring property where the notification can be delivered, the Council is required to advertise the application in the local press. This is the case even if the owner of the land is known. Neighbours are given 21 days from the date on the notification to respond.

For certain applications, the Planning Authority must place advertisements in local papers and site notices are required to be placed at the application site. Again, the time scale for any representations is 21 days.

Time Periods for Decisions

Legislation requires that a decision should normally be taken on applications within a period of 2 months or for major applications 4 months. Where a decision is not taken within this period, the applicant may, if it is for a local development, request that the Council's Local Review Body considers the application or, if it is for a major or national application, appeal to the Scottish Government on the grounds that the application is deemed to have been refused.

The Decision.

Planning authorities are entitled to approve, approve with conditions, or refuse an application. Authorities must provide clear reasons for their decision including reasons for the imposition of any conditions. These details are contained in the Report of Handling. These reports are made available on Public Access once the decision notice has been issued.

Developers who have an application refused or wish to appeal against the imposition of any conditions may:

- for applications dealt with under delegated powers ask the decision to be reviewed by the Local Review Body
- for applications considered by the full Council or the Planning and Building Standards Committee appeal to the Scottish Government.

It is the Council's aim to issue decisions on the more straightforward applications within this 2 month period.

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Local Review Body

For those applications that have been determined under the Council's Scheme of Delegation i.e. 'local applications' applicants can ask the Council to review the decision. A Local Review Body will then decide whether the decision taken was the correct one, or whether a different decision should be made.

The SBC [Local Review Body](#) (LRB) comprises the same Councillors as the PBS Committee. The Meetings are held in public and decisions are published on the council's website.

Legal Issues.

The grant of planning permission does not affect other legal rights that may also exist on land, or alter the requirement for other consents from other bodies such as the Building Standards Authority, Licensing Authority, Scottish Water, and Scottish Environment Protection Agency. Development proposals may also give rise to legal issues which will require to be addressed before a development might proceed, e.g. land ownership.



The granting of a planning permission does not convey a right on landowners or developers to proceed with a development in advance of obtaining all other necessary consents and clearances.

The role of Community Councils in the Development Management Process

There are 69 Community Councils in the Scottish Borders representing areas of widely differing character and interest from primarily urban settings to rural areas. Although all Community Councils conform to the principles of the SBC Community Council scheme they differ in size and organisation: there is no one pattern and this means that the way in which each Community Council consults local residents and deals with consultations will differ. It is, however, possible to lay down some general guidance on the role of Community Councils in Development Management which will apply to all Community Councils.

The purpose of consulting Community Councils on planning applications is to obtain views representative of the community as a whole. Community Councils may also be able to provide local information which is not otherwise available and to gather the views of the community on certain types of proposal.

PAN 47 makes recommendations as to how Community Councils should organise themselves in order to react in a timely manner to consultations. A single point of contact for planning matters can be useful as can a planning sub-committee which can take decisions on some categories of planning applications outwith the normal monthly cycle of meetings. The most critical point, however, is that Community Councils have an established procedure to ensure that all consultations are responded to promptly and correctly.

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Each Community Council is given a point of contact within the Planning and Regulatory Services Division. This point of contact will be a Planning Officer with responsibilities in the Community Council area who will be able to give advice on the planning process to Community Councillors.

Pre-application Consultations for Major and National Planning Applications

Pre-application Consultation is a requirement for proposals that fall into the category of major or national development. It aims to promote early community engagement in developing proposals and so improve the quality of proposals. As part of this process, the applicant must consult with Community Council(s) within whose area the application site is located and must hold at least one public event. SBC has no direct role in this process other than to ensure that the proposed means of community consultation is sufficient to meet statutory requirements. All feedback should be provided directly to the developer. Once the planning application is submitted, the Community Councils involved may make representations as normal.

Planning Applications

SBC publishes a [weekly list of planning applications](#) on the Council's website. This can be accessed in "real time", but is set out Monday to Monday.

- *Community Councils can request that they are consulted on a particular application within 7 days of the publication of the [weekly list](#), but do not need to be formally consulted in order to comment on applications. It is usually quicker to respond directly on an application than to request and then await a formal consultation.*
- *Community Councils should have a system in place to ensure that their list is checked weekly.*

On certain types of application, SBC will initiate a consultation with Community Councils, e.g.: Developments with more significant impacts such as hot food shops, dance halls, scrap yards, mineral workings, applications involving Listed Buildings, applications which might affect conservation areas, and applications that are considered likely to be of wider public interest.

Response Times

- *If consulted on an application, SBC provides Community Councils with 28 days in which to respond.*

It is important that responses, even if the response is 'no comment', are received on time. (It is occasionally possible to agree an extension to the deadline with the relevant planning officer but this has to be agreed in advance.) As SBC has a duty to determine applications timeously, it cannot delay making its decisions to await late responses.

Advice on Responses

Whilst community councillors may have questions or concerns about a number of aspects of a development proposal, when formulating a response to an application, they should restrict their comments to the planning merits of the case. Legal disputes over land ownership, or matters that are more appropriately dealt with under other legislation are seldom material to the planning merits of the case and cannot normally be taken into account in the determination of the application, no matter how much the strength of feeling locally. These are for the applicant or developer to address separately outside the planning process.

Section 25 of the Town and Country Planning (Scotland) Act 1997 states that:

"Where in making any determination under the Planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."

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The first “port of call” when formulating a response to a planning application is therefore to check the provisions of the [Local Development Plan](#), so far as they affect the application site. This also includes the Council’s [Supplementary Planning Guidance](#) which are material planning considerations.

Some policies within the development plan will be quite specific providing only limited scope for flexibility or interpretation. However, many will be criteria-based in that they will give support to development where it meets certain requirements, e.g. where satisfactory access can be achieved, where the proposal would be consistent with the character of the settlement, or where the proposal does not have a significant adverse effect on the landscape or the amenity of adjoining properties. In such instances community councillors will require to use their judgement to assess whether they think the policy would be satisfied or breached. This may often require a balance of differing policy requirements.

The matters that can legitimately be taken into consideration in determining an application are wide ranging. They will usually include factors such as the siting and design of building works, the road safety implications of a proposal, and the impact of a proposed use or activity on the character and amenity of an area. It will not generally be appropriate to consider matters such as neighbour disputes, impact on property values, the perceived over-provision or loss of a particular facility and matters which are dealt with under other legislation, however how much of a concern this might be.

The following factors should be borne in mind when considering and formulating a response to an application:

- any member of the Community Council having a private interest in an application, either in the site, the proposal or through the applicant or an objector, should declare that interest and play no part in the Community Council's consideration of the application.
- Where a member of the Community Council wishes to make a separate representation as a private individual, he/she should make it clear that they are responding on that basis and not on behalf of the Community Council.
- Where there is not a consensus of opinion, the Community Council should indicate that this is the case. Indeed, it would be inappropriate to suggest that the community is of a single mind if this is not the case.
- Views should be expressed in clear and unambiguous terms. The precise wording of responses can be important at Committee or at a subsequent appeal.
- When opposing an application the grounds for doing so should be clearly stated and should be on relevant planning grounds.
- Where qualified support for an application is expressed, an indication could be given to whether or not it is considered that conditions should be imposed. Conditions cannot be attached indiscriminately: they must be relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects.

When considering an application for approval of matters specified in conditions, (applications references will end with “AMC”), the planning authority is restricted to those matters and only those matters that have been reserved for further consideration and approval at the permission in principle stage (PPP). The planning authority may not consider other matters and, in particular, may not re-open debate about the principle of the development which will have been accepted through the granting of PPP. Community Councils should be mindful of these limitations when formulating their responses.

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